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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/733,752	12/11/2003	Eric Lawrence Barsness	ROC920030327US1	8404
46296 7590 07/23/2007 MARTIN & ASSOCIATES, LLC P.O. BOX 548 CARTHAGE, MO 64836-0548			EXAMINER LE, MICHAEL	
			ART UNIT 2163	PAPER NUMBER
			MAIL DATE 07/23/2007	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

**Advisory Action  
Before the Filing of an Appeal Brief**

Application No.

10/733,752

Applicant(s)

BARNESS ET AL.

Examiner

Michael Le

Art Unit

2163

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED 14 July 2007 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires \_\_\_\_\_ months from the mailing date of the final rejection.  
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**NOTICE OF APPEAL**

2. ☐ The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

**AMENDMENTS**

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because  
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);  
(b) ☐ They raise the issue of new matter (see NOTE below);  
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).  
5. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.  
6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).  
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.  
The status of the claim(s) is (or will be) as follows:  
Claim(s) allowed: \_\_\_\_\_.  
Claim(s) objected to: \_\_\_\_\_.  
Claim(s) rejected: 1-29, 32-38, 41-43, 46 and 47.  
Claim(s) withdrawn from consideration: \_\_\_\_\_.

ARGUMENTS ONLY

**AFFIDAVIT OR OTHER EVIDENCE**

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).  
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).  
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

**REQUEST FOR RECONSIDERATION/OTHER**

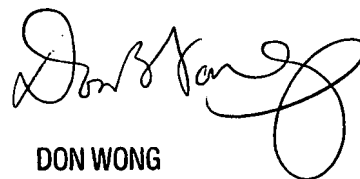
11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:  
See Continuation Sheet.  
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). \_\_\_\_\_.  
13. ☐ Other: \_\_\_\_\_.

Continuation of 11. does NOT place the application in condition for allowance because: In the response filed 7/14/2007, Applicant argues the rejections under 35 U.S.C. 101 and 35 U.S.C. 103(a).

In response to Applicant's arguments with respect to the rejection of claims 1-5, 8, 10-12, 14-29, 32-35, 37, 38, 42, 43 and 47 under 35 U.S.C. 101, the rejection is withdrawn in light of Applicant's arguments.

With regards to the rejection of claims 1-29, 32-38, 41-43, 46 and 47 under 35 U.S.C. 103(a), Applicant seems to make two arguments. First, Applicant seems to argue that the cited prior art, specifically Zuzarte, fails to disclose "at least one limit that is dynamically determined from data in the database" (Remarks at 15.) Applicant, however, admits that Zuzarte discloses statistical constraints (Remarks at 15) but argues that Zuzarte's "statistical constraints are different from ordinary integrity constraints", citing paragraph 0021, lines 1-3 of Zuzarte (Remarks at 15.) Paragraph 0021 of Zuzarte does state that statistical constraints are different from ordinary constraints, but it also states that the specific difference is "that they are not necessarily valid for all of the data." Zuzarte at para. 0021, lines 1-3. Therefore, the distinction between them is not so great that statistical constraints cannot be used for data integrity purposes.

Second, Applicant seems to argue the motivation to combine Bakuya and Zuzarte is improper and that any motivation to combine was based on impermissible hindsight. Applicant argues that since Zuzarte discloses statistical constraints for estimating cardinality, it would not have been obvious to one of ordinary skill in the art to combine Zuzarte with Bakuya, which discloses range constraints with fixed limits (Remarks at 17.) The Examiner respectfully disagrees. Although Zuzarte discloses the use of statistical constraints for estimating cardinality, Zuzarte discloses that the statistical constraints are calculated based upon high and low values of a column (Zuzarte at para. 0020, lines 6-12) and that the statistical constraints are like ordinary integrity constraints (range constraints) except for "an extra piece of information." Zuzarte at para. 0021, lines 4-6. Thus, contrary to Applicant's assertion, the statistical constraints of Zuzarte are very much like integrity constraints (range constraints). Bakuya discloses fixed range table constraints as acknowledged by Applicant. Since Zuzarte discloses statistical constraints, which are very much like ordinary integrity constraints except that they are dynamically determined from values of a column, one of ordinary skill in the art would have been motivated to combine Zuzarte with Bakuya by replacing the fixed range table constraints of Bakuya with the statistical constraints of Zuzarte. Paragraph 0003 of Zuzarte cited for the motivation to combine discusses the advantages of determining statistics of values of a column as it would aid in estimating cardinality thereby aiding in optimization of queries. One of ordinary skill in the art wanting to have table constraints with the added advantage of optimizing queries would have been motivated by the Zuzarte and therefore would have combined Zuzarte with Bakuya. Clearly, this motivation is not based upon impermissible hindsight. Further, the motivation to combine is permitted to be different from that of Applicant's. See *In re Kahn*, 441 F.3d 977, 987, 78 (Fed. Cir. 2006). Thus, for the reasons discussed, the rejection of claims 1-29, 32-38, 41-43, 46 and 47 under 35 U.S.C. 103(a) is maintained.



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